

## **SUBCHAPTER A : GENERAL REQUIREMENTS**

### **§106.1. Purpose.**

This chapter identifies facilities or types of facilities which the commission has determined will not make a significant contribution of air contaminants to the atmosphere and pursuant to the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.057, are exempt from the permit requirements of the TCAA, §382.0518.

Adopted October 23, 1996

Effective November 15, 1996

### **§106.2. Applicability.**

This chapter applies to facilities or types of facilities listed in this chapter where construction is commenced on or after the effective date of the relevant exemption. Facilities or types of facilities contained in this chapter must qualify for an exemption under this chapter and may not be qualified for an exemption listed in §116.211 of this title (relating to Standard Exemption List). Facilities or types of facilities not contained in this chapter may qualify for an exemption under §116.211 of this title.

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### **§106.4. Requirements for Exemption from Permitting.**

(a) To qualify for an exemption, the following general requirements must be met.

(1) Total actual emissions authorized under exemption from the proposed facility shall not exceed 250 tons per year (tpy) of carbon monoxide (CO) or nitrogen oxides (NO<sub>x</sub>); or 25 tpy of volatile organic compounds (VOC) or sulfur dioxide (SO<sub>2</sub>) or inhalable particulate matter (PM<sub>10</sub>); or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(2) Except as noted in paragraph (3) of this subsection, any facility or group of facilities, which constitutes a new major stationary source, as defined in §116.12 of this title (relating to Nonattainment Review Definitions), or any modification which constitutes a major modification, as defined in §116.12 of this title, under the new source review requirements of the Federal Clean Air Act (FCAA), Part D (Nonattainment) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title (relating to New Source Review Permits) and cannot qualify for an exemption under this chapter. Persons claiming an exemption under this chapter should see the requirements of §116.150 of this title (relating to New Major Source or Major Modification in Ozone Nonattainment Area) to ensure that any applicable netting requirements have been satisfied.

(3) Any facility or group of facilities, which constitute a stationary source, as defined in §116.12 of this title, that emits NO<sub>x</sub> and is located in the Houston/Galveston ozone nonattainment area (Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties) or the

Beaumont/Port Arthur ozone nonattainment area (Hardin, Jefferson, and Orange Counties) can exceed the major source/major modification level listed in Table 1 of §116.12 of this title (relating to Nonattainment Review Definitions) if the following conditions are met.

(A) Any new facility or group of facilities, which constitute a new stationary source, as defined in §116.12 of this title, and emit NO<sub>x</sub> in an amount, after netting, exceeding the major source threshold or major modifications exceeding the major modification level for NO<sub>x</sub> listed in Table 1, shall register by submitting a Form PI-8.

(B) The registration shall be submitted prior to commencement of construction, but not later than December 31, 1997.

(C) No other applicable limits contained in this section shall be exceeded.

(4) Any facility or group of facilities, which constitutes a new major stationary source, as defined in 40 Code of Federal Regulations (CFR) §52.21, or any change which constitutes a major modification, as defined in 40 CFR §52.21, under the new source review requirements of the FCAA, Part C (Prevention of Significant Deterioration) as amended by the FCAA Amendments of 1990, and regulations promulgated thereunder, must meet the permitting requirements of Chapter 116, Subchapter B of this title and cannot qualify for an exemption under this chapter.

(5) Unless at least one facility at an account has been subject to public notification and comment as required in Chapter 116, Subchapter B or Subchapter D of this title (relating to New Source Review Permits or Permit Renewals), total actual emissions from all exempted facilities at an account shall not exceed 250 tpy of CO or NO<sub>x</sub>; or 25 tpy of VOC or SO<sub>2</sub> or PM<sub>10</sub>; or 25 tpy of any other air contaminant except carbon dioxide, water, nitrogen, methane, ethane, hydrogen, and oxygen.

(6) Construction or modification of a facility commenced on or after the effective date of a revision of this section or the effective date of a revision to a specific exemption in this chapter must meet the revised requirements to qualify for an exemption.

(7) A proposed facility shall comply with all applicable provisions of the FCAA, §111 (Federal New Source Performance Standards) and §112 (Hazardous Air Pollutants), and the new source review requirements of the FCAA, Part C and Part D and regulations promulgated thereunder.

(8) There are no permits under the same Texas Natural Resource Conservation Commission account number that contain a condition or conditions precluding the use of a standard exemption or an exemption under this chapter.

(b) No person shall circumvent by artificial limitations the requirements of §116.110 of this title (relating to Applicability).

(c) The emissions from the facility shall comply with all rules and regulations of the commission and with the intent of the Texas Clean Air Act (TCAA), including protection of health and property of the public,

and all emissions control equipment shall be maintained in good condition and operated properly during operation of the facility.

(d) Facilities exempted by this chapter are not exempted from any permits or registrations required by local air pollution control agencies. Any such requirements must be in accordance with TCAA, §382.113 and any other applicable law.

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**§106.5. Public Notice.**

Facilities constructed under this chapter that consist of permanently or temporarily located concrete plants that accomplish wet batching, dry batching, or central mixing, or specialty wet batch, concrete, mortar, grout mixing, or pre-cast concrete products, shall conduct public notice of the proposed construction unless exempted from public notice requirements by TCAA, §382.058(b). In all cases, public notice shall include the information specified in paragraph (1)(A) and (B) of this section.

(1) Public notification procedures.

(A) Publication in public notices section of a newspaper. At the applicant's expense, notice of intent to construct shall be published in the public notice section of two successive issues of a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice shall contain the following information:

- (i) application number;
- (ii) company name;
- (iii) type of facility;
- (iv) description of the location of facility or proposed location of the facility;
- (v) contaminants to be emitted;
- (vi) location and availability of copies of the completed application;
- (vii) public comment period;
- (viii) procedure for submission of public comments concerning the proposed construction;
- (ix) notification that a person residing within 1/4 mile of the proposed plant is an affected person who is entitled to request a hearing in accordance with commission rules; and

(x) name, address, and phone number of the regional commission office to be contacted for further information.

(B) Publication elsewhere in the newspaper. Another notice with a size of at least 96.8 square centimeters (15 square inches) and whose shortest dimension is at least 7.6 centimeters (three inches) shall be published in a prominent location elsewhere in the same issues of the newspaper and shall contain the information specified in paragraph (1)(A)(i)-(iv) of this section and note that additional information is contained in the notice published under paragraph (1)(A) of this section in the public notice section of the same issue.

(2) Comment procedures.

(A) Comment period. Interested persons may submit written comments to the executive director, including requests for public hearings under TCAA, §382.056, on the executive director's preliminary decision to issue or not to issue the standard exemption. All such comments and hearing requests must be received in writing within 15 days of the last publication date of the notices specified in paragraph (1)(A) and (B) of this section. Any requests for a contested case hearing shall include a brief, but specific, written statement of interest and basis for challenging the application. Such statement shall convey in plain language the requestor's location relative to the proposed facility, why the requestor believes he or she will be affected by emissions from the proposed facility, what the requestor's concerns are about the emissions from the proposed facility, and how the requestor believes emissions from the facility will affect him or her if permitted. This statement shall not be used as the basis for denial of party status in any contested case hearing. Party status determinations will be made based on evidence developed at the initial prehearing conferences.

(B) Consideration of comments. All written comments received by the executive director during the period specified in subparagraph (A) of this paragraph shall be considered in determining whether to issue or not to issue the standard exemption. The executive director shall make record of all comments received together with the agency analysis of such comments available for public inspection during normal business hours at the Austin office of the commission and appropriate regional office.

Adopted February 19, 1997

Effective March 14, 1997

**§106.6. Registration of Emissions.**

(a) An owner or operator may certify and register the maximum emission rates from facilities exempted under this chapter in order to establish enforceable allowable emission rates which are below the emission limitations in §106.4 of this title (relating to Requirements for Exemption from Permitting).

(b) All representations with regard to construction plans, operating procedures, and maximum emission rates in any certified registration under this section become conditions upon which the exempt facility shall be constructed and operated.

(c) It shall be unlawful for any person to vary from such representation if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless the certified registration is first revised.

(d) The certified registration must include documentation of the basis of emission estimates and a written statement by the registrant certifying that the maximum emission rates listed on the registration reflect the reasonably anticipated maximums for operation of the facility.

(e) The certified registration shall be maintained on-site and be provided immediately upon request by representatives of the Texas Natural Resource Conservation Commission or any air pollution control agency having jurisdiction. If the plant site is unmanned, the regional manager may authorize an alternative site to maintain this documentation. Copies of the certified registration shall be included in applications for permits subject to review under the undesignated heads in Chapter 116, Subchapter B of this title (relating to New Source Review Permits).

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